IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 275 of 1993

Shri Ambadas Bandu Metkari ..Appellant
(Orig.Plaintiff)

V/s

1. The Principal,
Seth Govindji Raoji Ayurvedic
Mahavidyalaya
2. The State of Maharashtra ..Respondents
(Orig.Defendants)

Shri Abhiraj Kulkarni i/b P.N.Joshi for Appellant
Shri Abhijit Kulkarji i/b A.K.Kumbhakoni for
Respondent no.1.

CORAM : S.R.SATHE,J.
DATED : 11th August 2004.

ORAL JUDGMENT :-

1. Being aggrieved by the judgment and order passed by 3rd Additional District Judge, Solapur in

Civil Appeal No.325 of 1989 whereby the order passed by the Joint Civil Judge, S.D., Solapur dismissing the plaintiff’s suit was confirmed and appeal was dismissed, the original plaintiff has preferred this appeal. For the sake of convenience hereinafter parties shall be referred to as the plaintiff and defendants.

2. Brief facts giving rise to this appeal are as under :

. The plaintiff was serving as an office Superintendent in the defendant no.1 college. When he joined the services retirement age was 60 years. However, subsequently by application of Maharashtra non Agricultural Universities and Affiliated Colleges Standard Code Rules 1984, age of retirement was brought from 60 to 58 years. According to the plaintiff at that time option was given to the employees and those who wanted to have certain benefits in pension and gratuity for them the retirement age was 58 years and those who were to be retained upto 60 years for them, there was no such benefits. As the plaintiff had not opted for retirement at the age of 58 years he was entitled to serve till the age of 60 years. However the defendant issued order superannuating the plaintiff at the age of 58 years. According to the plaintiff the said order was illegal. He therefore filed

Regular Civil Suit No.1096 of 1986 and prayed for declaration that the said order is illegal and also asked for permanent injunction restraining the defendant from obstructing him to serve in the defendant's college.

3. The defendant no.1 filed written statement at Exh.70 and resisted the suit claim. The defendant contended that as per the rules applicable and in particular Rule 82, the retirement age of the non teaching staff was 58 and as such the plaintiff has been superannuated at the age of 58. On these pleading the learned trial Judge framed issues. After considering the evidence adduced by both the parties the trial court held that the plaintiff has failed to prove that non teaching staff of the defendant college was entitled to continue in service till the age of 60 years and hence the plaintiff's suit was dismissed. Being aggrieved, the plaintiff filed first appeal but the same also came to be dismissed. Hence the plaintiff filed this second appeal.

4. The only substantial question formulated at the time of admission is whether the Rules of Maharashtra Non Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Non teaching employees) Rules, 1984 can be made applicable to the defendant no.1 and

whether the retirement age of plaintiff can be said to be 58 years.

5. The learned Advocate for the plaintiff argued before me that in the instant case after the application of the Code and scheme option was given to non teaching staff either to retire at the age of 58 years or at the age of 60 years, consequently some benefits were given to the employees who had given option to retire at the age of 58 years. However, it must be noted that the learned Advocate for the plaintiff could not point out any notification by which such scheme was introduced by the Government or by University. Not only that but there is no documentary evidence to show that the plaintiff had exercised such option when scheme was introduced. Naturally, in the absence of any such material on record both the Courts below rightly held that as the provisions of Section 117 of Shivaji University Act 1963 and provisions of 63 of Maharashtra Non Agricultural, Universities and Affiliated Colleges Standard Code (Terms and Conditions of non teaching employees) Rules, were not in existence and is made applicable to the defendant college and as per Rule 82 of the same the retirement of age of employee is 58 years only. So, the order issued by the defendant college superannuating the plaintiff at the age of 58 years was legal and correct. Though the plaintiff raised the point with regard to giving benefit of

pension and gratuity in respect of those employees who have been asked to superannuate at the age of 58, it must be noted that no such relief with regard to pension and gratuity is specifically claimed by the plaintiff in the present suit. So, plaintiff is not entitled to advance argument in that behalf. Thus from the perusal of the first appellate court judgment, it is very clear that the order passed by the Court is legal and correct. There is no necessity to interfere with the same. Hence the appeal is dismissed with costs.